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RHOADES et al. v. BANKING, TRUST & MORTGAGE CO. et al.

June 12, 1919.

[99 S. E. 673.]

1. **Corporations (§ 80 (12)*)—Misrepresentations Inducing Subscription to Stock—Rescission.**—One induced by fraud or material false representations as to matters of fact to subscribe for corporate stock may rescind on discovery of the fraud, and have the aid of equity to make his rescission effective and to release him from liability or recover back what he has paid.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 532; 12 Va.-W. Va. Enc. Dig. 807, 811.]

2. **Corporations (§ 80 (5)*)—Subscription to Stock—Misrepresentation—Puffing.**—A misrepresentation to entitle the subscriber to stock to relief must have been one of existing fact; mere puffing statements or talk as to future prospects consisting of matters of opinion not having such effect.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 808.]

3. **Corporations (§ 80 (11)*)—Subscription to Stock—Misrepresentation—Proof.**—In suit to rescind subscriptions to corporate stock as induced by fraud and misrepresentation, the allegations of misrepresentation, even if no actual fraudulent intent existed, must be clearly proved by unequivocal and convincing evidence.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 504.]

4. **Corporations (§ 80 (2)*)—Misrepresentations Inducing Subscription to Stock—Authority to Make Representation.**—Where subscriptions to stock were procured by the misrepresentation of the promoting company's agent that life insurance companies would lend money at 4 per cent. to the corporation for it to loan out again at 5 per cent., the subscribers can rescind their subscriptions, though the misrepresentation was unauthorized and not known by the banking company, the promoting company, or any of the persons concerned.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 807.]

5. **Corporations (§ 80 (10)*)—Subscription to Stock—Misrepresentations—Waiver of Right to Rescind.**—Subscribers to corporate stock under misrepresentation, by their appointment of an attorney as their proxy, or by their employment of him as their attorney to attend the organization meeting of the company, without giving him authority to repudiate the subscriptions, held not to have ratified such subscriptions and waived their rights to repudiate the contracts after the organization meeting was held; the subscribers not having known of the misrepresentation until after the meeting.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 809.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

6. Corporations (§ 80 (10)*)—Subscriptions to Stock—Ratification by Failure to Repudiate.—Where subscriptions to corporate stock were induced by a misrepresentation, and the subscribers' attorney or proxy at the organization meeting of the company was without authority to ratify or repudiate the subscriptions, his action in not repudiating the subscriptions at the organization meeting after notice to him that they were obtained by the misrepresentation did not amount to a ratification precluding subsequent repudiation.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 809.]

7. Corporations (§ 80 (12)*)—Subscriptions to Stock—Election to Affirm or Repudiate.—Subscribers to corporate stock under misrepresentation on full knowledge on their part had the right of election to affirm or repudiate their subscriptions.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 807.]

Appeal from Corporation Court of Petersburg.

Suit by L. A. Rhoades and others against the Banking, Trust & Mortgage Company and others. From decree for defendants, plaintiffs appeal. Reversed as to certain of appellants, and affirmed as to the others.

Hidden & Bickers, of Culpeper, for appellants.

Mann & Townsend, of Petersburg, for appellees.

SUTTON *v.* VIRGINIA RY. & POWER CO.

June 12, 1919.

[99 S. E. 670.]

1. Street Railroads (§§ 93 (2), 99 (7)*)—Crossing Accidents—Rights at Crossings—Speed.—Where the car of a street railway company using a public highway in which it owns no right of way and an automobile driver meet at a crossing, in the absence of statute or ordinance, the common-law rule that the speed must be reasonable obtains; each party being under duty to have his vehicle under such control that either can stop if necessary to avoid a collision.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 128; 12 Va.-W. Va. Enc. Dig. 840.]

2. Street Railroads (§ 93 (2)*)—Crossing Accidents—Speed—Negligence Per Se.—Operation of a street car on a public highway in which the company owns no exclusive right of way, at such a speed as to prevent its stopping before reaching a crossing, is negligence per se.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 840.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.